

STATE OF MICHIGAN
COURT OF APPEALS

C.M. RICE & ASSOCIATES, INC.,

Plaintiff-Appellant,

v

PAUL T. CHOSID, THE JOSEPH M. SILVER
TRUST Dated 1/30/86, and BURKHART ROAD
ASSOCIATES, L.L.C.,

Defendants-Appellees.

UNPUBLISHED

February 4, 2000

No. 215140

Livingston Circuit Court

LC No. 98-016518-CK

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendants entered into an agreement under which defendants would purchase property and defendants would pay plaintiff a percentage of profits from any sale of that property. The agreement provided that the property "shall be sold to others at such times, prices and terms as [defendants], in their sole discretion, determine"

Plaintiff filed suit, alleging that defendants had breached the agreement by failing to sell any property and by therefore failing to pay plaintiff a percentage of the profits. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that they could not have breached the agreement because a decision to sell any property was within their sole discretion. The trial court granted the motion, finding that the language of the agreement was unambiguous.

We review the trial court's decision whether to grant a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins*

* Circuit judge, sitting on the Court of Appeals by assignment.

Co, 458 Mich 288, 294; 582 NW2d 776 (1998). We conclude that the trial court did not err in granting defendants' motion for summary disposition.

Plaintiff argues that parol evidence should have been admitted to demonstrate the intent of the parties. However, where the language of a contract is clear and unambiguous, parol evidence cannot be admitted to vary it. *In re Skotzke Estate*, 216 Mich App 247, 251; 548 NW2d 695 (1996). The language of the agreement stating that the decision to sell any property acquired under the agreement was within the "sole discretion" of defendants is clear and unambiguous. Plaintiff has not specified what discovery could have been conducted to demonstrate ambiguity in the language. To conclude that defendants are in breach of the agreement would be to nullify the provision granting defendants sole discretion regarding when and at what price any property would be sold. Plaintiff has failed to demonstrate that a genuine issue of material fact exists that would prevent entering judgment for defendants as a matter of law.

Plaintiff also argues that the agreement was illusory because whether plaintiff was ever paid is left entirely to the discretion of defendants. However, plaintiff's action sought to *enforce* the agreement, not to declare it void as illusory. Moreover, plaintiff cites no legal authority for its contention that the agreement was illusory. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). Doing so constitutes a failure to properly present the issue to this Court for review. *Id.* at 640.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks